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J.G., Appellant)	
)	
and)	Docket No. 15-251
)	Issued: April 13, 2015
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE,)	
San Francisco, CA, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On November 12, 2014 appellant filed a timely appeal from an August 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established total disability from February 9 to March 11, 2014 due to his September 18, 2013 employment injury.

On appeal, appellant contends that OWCP falsely stated that he had undergone left ankle surgery. He further contends that his plantar fasciitis and tenosynovitis were caused by his employment-related left ankle subtalar and calcaneal contusion.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on September 18, 2013 appellant, then a 53-year-old park ranger, sustained a contusion of the left ankle when a metal gate hit his left ankle. Appellant stopped work on September 29, 2013 and returned to modified-duty work at the employing establishment on October 20, 2013.

On February 6, 2014 appellant filed a claim for compensation for leave without pay from February 9 through March 11, 2014. On February 18, 2014 he advised OWCP that the employing establishment could not provide him with light-duty work.

Medical records dated September 18, 2013 to January 28, 2014 addressed appellant's left ankle conditions, work restrictions, and medical treatment. A November 6, 2013 medical report indicated that he received an injection on that day to treat his left ankle osteoarthritis and chondromalacia. In work status reports dated October 15 and November 5, 2013, and January 28, 2014, Dr. Aman Shabi Khan, an attending Board-certified orthopedic surgeon, released appellant to return to modified-duty work. Appellant was restricted to seated work. In a December 17, 2013 report, Dr. Khan provided examination findings and diagnostic test results regarding the right and left lower extremities. He diagnosed subtalar and calcaneal contusion with tenosynovitis. In a prescription also dated December 17, 2013, Dr. Khan ordered physical therapy two times a week for six weeks to treat appellant's contusion with Achilles tendinitis/plantar fasciitis.

In reports dated January 30 and February 11, 2014, Ben Evans, a physical therapist, addressed the treatment of appellant's left ankle pain.

In a February 23, 2014 memorandum, the employing establishment stated that no light-duty work was available to accommodate appellant's seated work restriction.

By letter dated February 25, 2014, OWCP requested that appellant submit rationalized medical evidence to establish that his work restriction was medically necessary due to his accepted employment injury. It noted that the medical record indicated that he received an injection in the left ankle to treat osteoarthritis and chondromalacia. OWCP stated that appellant's claim had not been accepted for Achilles tendinitis, plantar fasciitis, or left ankle osteoarthritis and chondromalacia.

Reports dated January 6 to March 4, 2014 from Mr. Evans and Kimberly Polishchuck, a physical therapist, addressed the treatment of appellant's left ankle pain.

In a January 28, 2014 report, Dr. Khan listed examination findings and diagnostic test results regarding the right and left ankles. He reiterated his prior diagnosis of subtalar and calcaneal contusion with tenosynovitis. Dr. Khan stated that appellant's work restrictions remained unchanged. In a March 11, 2014 letter, he related that appellant was being seen for a subtalar and calcaneal contusion. Dr. Khan advised that he had compensatory issues with respect to his plantar fasciitis and tenosynovitis, but his working diagnosis was subtalar and calcaneal contusion. He stated that, prior to his return to full-duty work on March 16, 2014, appellant was

unable to walk and stand after prolonged activities. Dr. Khan stated that this was the reason why he was only available for seated work.

In an April 17, 2014 decision, OWCP denied appellant's claim for compensation from February 9 to March 11, 2014, finding that the medical evidence did not establish that he was totally disabled during the claimed period due to his accepted September 18, 2013 employment injury.

By letter dated May 27, 2014, appellant requested reconsideration.

In a May 8, 2014 letter, Dr. Khan stated that appellant had compensatory issues with respect to his plantar fasciitis and tenosynovitis as a direct result of his work-related subtalar and calcaneal contusion. There was a clear one-to-one ratio connection between this contusional injury and subsequent plantar fasciitis and tenosynovitis. Dr. Khan opined that appellant qualified for temporary total disability from February 9 to March 11, 2014. Objectively, he had significant discomfort to the left ankle and heel, tenderness to palpation, antalgic gait, decreased strength, range of motion and balance, gait disturbance, and obvious swelling and inflammatory response. In a June 19, 2014 report, Dr. Khan provided examination findings and advised that appellant would continue wearing a dorsal night splint and other conservative measures at home. He stated that it was disheartening that full relief from pain had not yet been achieved. As such, Dr. Khan planned to follow up with appellant in three weeks to update his care plan and discuss further procedures to relieve his chronic pain. In a July 10, 2014 report, he reiterated that appellant's prior diagnosis of subtalar and calcaneal contusion with tenosynovitis.

A May 8, 2014 report signed by Sara Langley, a nurse practitioner in Dr. Khan's office, provided examination findings and recommended a dorsal night splint to assist with the alleviation of appellant's pain and possible surgery in the future.

Medical records from the employing establishment addressed appellant's fitness for duty from November 14, 2002 to September 28, 2010.

In an August 27, 2014 decision, OWCP denied modification of the April 17, 2014 decision. The medical evidence submitted was insufficient to establish that appellant was disabled from February 9 through March 11, 2014 due to his accepted September 18, 2013 employment injury.

LEGAL PRECEDENT

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² The term disability is defined as the incapacity because of an

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.³

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁴ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.⁶ The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁷ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

OWCP accepted that appellant sustained a contusion of the left ankle while working as a park ranger. Appellant claimed compensation for disability from February 9 to March 11, 2014. OWCP denied his claimed compensation for disability on the grounds that the evidence was insufficient to establish that the claimed disability was due to his accepted left ankle injury. Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed disability and the accepted condition.⁹ The Board finds that he did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injury.

Dr. Khan's May 8, 2014 report found that appellant had plantar fasciitis and tenosynovitis as a direct result of his work-related subtalar and calcaneal contusion. He opined that appellant was temporarily totally disabled from February 9 to March 11, 2014. Dr. Khan stated that there was a clear one-to-one ratio connection between the accepted condition and the consequential plantar fasciitis and tenosynovitis. He also stated that, prior to his return to full-duty work on March 16, 2014, appellant could only perform seated work because he was unable to walk and stand after prolonged activities. Dr. Khan did not sufficiently address how the diagnosed conditions and work restriction were causally related to the September 18, 2013 work incident. His report did not explain how being hit on the left ankle by a gate on

³ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁴ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ *See William A. Archer*, 55 ECAB 674 (2004); *supra* note 4.

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

September 18, 2013 caused appellant's consequential conditions and medical restrictions. Moreover, while Dr. Khan found that appellant was totally disabled during the claimed period, he did not adequately explain how his disability was causally related to the accepted employment injury. Thus, the Board finds that his opinion regarding causal relationship is of limited probative value as he did not provide adequate medical rationale in support of his conclusions.¹⁰ Similarly, Dr. Khan's March 11, 2014 report is of limited probative value because he failed to explain how appellant's plantar fasciitis and tenosynovitis, work restriction, and disability were causally related to the accepted employment injury.¹¹ His June 19 and July 10, 2014 reports found that appellant had a subtalar and calcaneal contusion with tenosynovitis and plantar fasciitis and addressed his medical treatment. Dr. Khan did not provide an opinion addressing whether the diagnosed conditions and any resultant disability during the claimed period were caused by the accepted work injury.¹² The remaining reports from him predate the claimed period of disability and fail to provide an opinion stating that appellant was totally disabled from February 9 to March 11, 2014 due to the accepted employment injury.¹³ Therefore, these reports do not establish appellant's disability claim for this period.

The medical records from the employing establishment dated November 14, 2002 to September 28, 2010 also predate the claimed period of disability and fail to provide an opinion stating that appellant was totally disabled from February 9 to March 11, 2014 due to the accepted employment injury.¹⁴

The reports from Mr. Evans and Ms. Polishchuck, physical therapists, and Ms. Langley, a nurse practitioner, have no probative medical value. Neither a physical therapist nor a nurse practitioner is a physician as defined under FECA.¹⁵

Appellant failed to submit rationalized medical evidence establishing that his disability from February 9 through March 11, 2014 resulted from residuals of his accepted employment-related left ankle condition.

On appeal, appellant contended that OWCP falsely stated that he had undergone left ankle surgery. Contrary to appellant's contention, OWCP did not state that he had undergone

¹⁰ C.A., Docket No. 14-1123 (issued August 21, 2014); S.S., 59 ECAB 315 (2008); *William C. Thomas*, 45 ECAB 591 (1994).

¹¹ *Id.*

¹² See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁴ *Id.*

¹⁵ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA); *Roy L. Humphrey*, 57 ECAB 238 (2005).

left ankle surgery. In its February 24, 2014 developmental letter, it stated that appellant had received an injection on November 6, 2013 to treat left ankle conditions that had not been accepted as work related.

Appellant further contended on appeal that his plantar fasciitis and tenosynovitis were caused by his employment-related left ankle subtalar and calcaneal contusion. As discussed, however, he has the burden to submit rationalized medical evidence supporting his allegation. Appellant's lay opinion on the cause of his conditions is insufficient to discharge his burden of proof as lay individuals are not competent to render a medical opinion.¹⁶ The issue of causal relationship is a medical one and must be resolved by probative medical evidence.¹⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he was totally disabled from February 9 to March 11, 2014 due to his September 18, 2013 employment injury.

¹⁶ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁷ *Luis M. Villanueva*, 54 ECAB 666 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board